

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

United States

v.

04-cr-97-01-SM

Kevin Larrabee

NOTICE OF RULING

Re: Document No. 25, Motion for Courthouse Transcripts

Ruling: Denied. Defendant presumably is seeking transcripts at government expense. (If not, they are readily available from the court reporter upon payment of the fee approved by the Judicial Conference.) Defendant seeks transcripts of his arraignment, plea hearing, and sentencing hearing, but says no more than that he wants the transcripts to aid in the process of filing motions in forma pauperis. Defendant was convicted and sentenced, and did not file a direct appeal. Accordingly, he is likely considering filing a motion to vacate under 28 U.S.C. s 2255. But he is entitled to transcripts at government expense for purposes of mounting a collateral attack only if the court certifies that the transcripts are needed to decide the issue(s) presented by the motion. See 28 U.S.C. § 753(f). It is not enough for a defendant/petitioner to say that he needs the transcripts to look for issues to raise, he must identify the issue(s) to be raised and demonstrate an actual need for the transcript to pursue the matter. See United States v. MacCollom, 426 U.S. 317 (1976); Ellis v. Maine, 448 F.2d 1325 (1st Cir. 1971). Defendant has not provided sufficient information from which the court could determine either that the proposed motion(s) are not frivolous, or that a transcript is needed to resolve the issues to be raised.

Entered by: Steven J. McAuliffe, Chief District Judge

Date: May 2, 2006

cc: Kevin Larrabee, pro se
Helen Fitzgibbon, Esq.